

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1221 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

SATISH KALYANSINH JETHWANI

Versus

POLICE COMMISSIONER

Appearance:

MS JAYSHREE C BHATT for Petitioner

Mr. D.P. Joshi, A.P.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 03/11/1999

ORAL JUDGEMENT

Heard learned Advocate Ms. Jayshree Bhatt for the
petitioner and learned A.P.P. Mr. D.P.Joshi for the
respondents no.1, 2 and 3.

The detention order dated 29-1-1999 passed by the
respondent no.1-Commissioner of Police, Ahmedabad City
against the petitioner in exercise of powers conferred

under Section 3(1) of the Gujarat Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present petition under Article 226 of the Constitution.

2. The grounds of detention served to the petitioner under Section 9(1) of "PASA", copy of which is produced at Annexure "B" alongwith the translation inter alia indicate that two prohibition cases vide CR no.5651/98 dated 28-12--1998 and CR no.5003/99 dated 15-1-1999 were registered against the petitioner at Sardarnagar Police Station and DCB Police Station respectively for the offences made punishable under the Bombay Prohibition Act. That in both the cases Indianmade liquor has been seized from the possession of the petitioner. Furthermore, two witnesses on assurance of their anonymity have supplied information about the bootlegging activity of the petitioner which pertains to incidents dated 30-12-1998 and 3-1-1999.

3. That in consideration of the said material, the respondent no.1 as detaining authority has come to the conclusion that the petitioner is a "bootlegger" within the meaning of Section 2(b) of PASA. That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the bar on behalf of the petitioner that on the date of passing the impugned order, the petitioner was in judicial custody in respect to prohibition case no.5651/98 while in police remand in respect to CR no.5033/99. Despite the said fact without considering the aspect of less drastic remedy of opposing and cancellation of bail available under Section 437(5) Cr.P.C., the detaining authority has passed the impugned order, and as such the subjective satisfaction having been vitiated the order is invalid.

5. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT & ORS. 1995(2) G.L.R. 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the Cr.P.C. claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram: C.K.Thakkar & A.L.Dave,JJ.).

6. In the instant case also, on scrutiny of papers it appears that in the penultimate paragraph of the grounds of detention, the detaining authority while considering the availability of alternative remedy has observed that the petitioner was in judicial custody in one case while in police remand in another case. It is further observed that the petitioner is likely to make bail application and in all probability would be released on bail and thereafter is likely to continue his antisocial activity. Thus, the impugned order appears to have been passed on apprehension and not on material after considering the less drastic remedy of opposing and cancellation of bail available to the petitioner under Section 437(5) Cr.P.C. Under the circumstances, I am constrained to hold that the impugned order is bad in law on account of vitiated subjective satisfaction.

8. As the petition succeeds on the above stated ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

9. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 29-1-1999 passed by the respondent no.1-Police Commissioner, Ahmedabad City against the petitioner is hereby quashed and set aside. The petitioner-detenu-Satish Kalyansinh Jethwani(Sindhi) is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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